Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENT TO RULE 7(C) OF THE LOCAL RULES OF PRACTICE FOR THE 2ND JUDICIAL CIRCUIT, MCCRACKEN COUNTY CIRCUIT COURT.

Upon recommendation of the Judges of the 2nd Judicial Circuit, McCracken Circuit Court, and being otherwise sufficiently advised,

The amendment to Rule 7(C) of the McCracken County Circuit Court Local Rules of Practice is hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 14th day of May 2014.

CHIEF JUSTICE JOHN D. MINTON, JR.

AMENDMENT OF RULES OF PRACTICE
McCRACKEN CIRCUIT COURT
PADUCAH, KENTUCKY

The Rules of the McCracken Circuit Court ("RMCC") having been adopted by the McCracken Circuit Court on April 28, 2000; the RMCC having been approved by the Kentucky Supreme Court on May 8, 2000; the Circuit Judges of the McCracken Circuit Court having adopted a change to Rule 7(C); upon approval by the Kentucky supreme Court, and in accordance with SCR 1.040, Rule 7(C) is amended to provide as follows:

Rule 7C

One pretrial conference shall be scheduled in a criminal case. The conference shall be continued only upon a showing of good cause at a hearing. At least five business days prior to pretrial conference for criminal cases, the Commonwealth shall make an offer to the defendant of a recommended penalty in exchange for defendant's plea of guilty or the Commonwealth may decline to make any offer.

At the pretrial conference, the defendant must state whether he accepts the Commonwealth's offer on a plea of guilty, if any. If the offer is accepted defendant will enter a plea of guilty pursuant to the offer and a sentencing date set. If defendant rejects the offer, the offer expires at that time and no offer shall be made after that date. No negotiated plea will then be accepted by the court absent a finding of good cause following a hearing. Defendant may plead guilty without a recommendation by the Commonwealth at any time prior to the beginning of trial.

The court may accept or reject an offer prior to sentencing. A Commonwealth's motion to dismiss or amend an indictment will be granted unless clearly contrary to manifest public interest; a "sentence bargain" which does not dismiss or amend a charge but recommends or does not oppose a particular sentence may be rejected or approved in the court's discretion; and a "charge bargain" which dismisses or amends a charge or charges or a "hybrid bargain" which is a charge bargain plus an agreement as to sentencing, can be approved or rejected in the court's discretion but the court must articulate the prosecutor's reasons for the bargain and the court's reasons for rejecting it.

Further, former Rule 7C is changed to 7D and the prior 7D changed to 7E.

The McCracken Circuit Court includes the third paragraph which tracks the language of *Hoskins v. Maricle*, 150 S.W.3d 1, 24 (2004) setting forth the conditions under which a court may reject plea bargains.

All other adopted Rules of the RMCC shall remain in full force and effect.

DATED this 13 day of May, 2014.

CRAIG Z. CLYMER, JUDGE
McCracken Circuit Court
Division No. II

TIM KALTENBACH, JUDGE
McCracken Circuit Court
Division No. I

CYNTHIA E. SANDERSON, JUDGE
McCracken Family Court

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENT TO RULE 7(B) OF THE LOCAL RULES OF PRACTICE FOR THE 2ND JUDICIAL CIRCUIT, MCCRACKEN COUNTY CIRCUIT COURT.

Upon recommendation of the Judges of the 2nd Judicial Circuit, McCracken Circuit Court, and being otherwise sufficiently advised,

The amendment to Rule 7(B) of the McCracken County Circuit Court Local Rules of Practice is hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 23rd day of November 2009.

CHIEF JUSTICE JOHN D. MINTON, JR.

AMENDMENT OF RULES OF PRACTICE
MCCRACKEN CIRCUIT COURT
PADUCAH, KENTUCKY

The Rules of the McCracken Circuit Court ("RMCC") having been adopted by the McCracken Circuit Court on April 28th, 2000; the RMCC having been approved by the Kentucky Supreme Court on May 8th, 2000; the Circuit Judges of the McCracken Circuit Court having adopted a change to Rule 7(B) governing the arraignment of defendants charged with felony offenses; upon approval by the Kentucky Supreme Court, and in accordance with SCR 1.040, Rule 7(B) is amended to provide as follows:

> A defendant shall be arraigned at the time and on the date the defendant has been ordered to appear for arraignment, which shall normally be at 8:30 a.m. on the Thursday following his indictment by the Grand Jury. At arraignment, the Court shall schedule a pretrial conference. Unless the assigned Judge is unavailable, the Judge of Division I shall conduct arraignments in even numbered months, and the Judge of Division II shall conduct arraignments in odd numbered months. Either Judge may hold arraignments at the request of the other Judge or in the absence or disability of the other Judge.

All other adopted Rules of the RMCC shall remain in full force and effect.

Dated, this 17 day of November, 2009.

APPROVED:

Cynthia E. Sanderson, Judge
McCracken Family Court

Craig Z. Clymer, Judge
McCracken Circuit Court
Division II

Tim Kaltenbach
McCracken Circuit Court
Division I

Supreme Court of Kentucky

IN RE: ORDER APPROVING AMENDMENTS TO THE RULES OF PRACTICE FOR THE MCCRACKEN CIRCUIT COURT (2ND JUDICIAL CIRCUIT)

The amendments to the Rules of Practice for the McCracken Circuit Court, 2nd Judicial Circuit, are hereby approved.

ENTERED: May 8, 2000.

Chief Justice

RULES OF PRACTICE
McCRACKEN CIRCUIT COURT
PADUCAH, KENTUCKY

1. CITATION OF RULES

These rules may be cited as "RMCC" or Rules of McCracken Circuit Court.

2. DIVISIONS, etc.

A. McCracken Circuit Court shall operate in two Divisions; namely, Division I and Division II, and each Division shall have jurisdiction of both criminal and civil cases as is provided in Kentucky Revised Statute 23A.010 et seq.

3. JURY TRIAL PERIODS

A. Jury trials in Division I and II shall be conducted during the months of January through December. In even numbered years, Division I shall conduct criminal cases in each of the even numbered months. Division II shall conduct criminal cases in all odd numbered months. Civil cases will be conducted by either Division in months not set aside for criminal trials. In odd numbered years, the Divisions will reverse order. Division I shall conduct criminal cases in the odd numbered months, while Division II conducts criminal cases in the even numbered months.

B. Generally, Circuit Courtroom A will be utilized for Criminal terms for each Division. Courtroom B will be used for civil proceedings. However, in the event of civil proceedings with multiple parties, by agreement of the Judges of Division I and Division II, Courtroom A will be used.

C. Unless otherwise ordered by the Judge of either Division, juries will be summoned to appear on the first business day (except Friday) of each of the months in which juries are required.

D. Notwithstanding the foregoing provisions, the Court may with its discretion and for good cause, assign one or more civil actions during a month set aside for criminal trials or may assign one or more criminal actions during a month set aside for civil trials in their respective Division.

4. ASSIGNMENT OF CASES TO DIVISIONS

A. The Clerk shall prepare two sets of 100 cards each. One set shall be used for the assignment of Civil cases and one set shall be used for the assignment of Criminal cases. There shall be printed or written on the underside of 50 cards from each set, "McCracken Circuit Court Division I", and on the remaining 50 cards of each set, "McCracken Circuit Court Division II". The cards shall then be shuffled so that the sequence will be entirely by chance. Each set of 100 cards shall be sealed on the top and on each side so that the number of the division cannot be seen. A blank card shall be placed on the last card in the package so that it will be impossible to see the number on the last card.

B. Whenever a civil action is commenced by the filing of the original complaint with the Circuit Court, the Clerk or Deputy acting for the Clerk in the presence of the attorney filing the complaint, if they desire to be present, shall remove the top card of the set and assign the case to the Division shown on that card. Whenever a criminal case is commenced by the return of an indictment, or by information, the Clerk, or Deputy Clerk acting for the Clerk shall remove the top card of the set and assign the case to the Division shown on that card. New sets of cards shall be prepared and furnished by the Clerk as needed from time to time, but no new set shall be started or opened until all of the cards in the current set have been exhausted. Upon assignment, the Clerk shall stamp the number of Division upon the complaint and the civil docket sheet. Upon assignment, the Clerk shall stamp the number of Division upon the indictment or information and the criminal docket sheet. Thereafter, pleadings, motions, orders and all papers in the case shall indicate the Division in which they are filed. The assignment card shall be attached to the record of the case. A record of the assignment in each Division shall be kept by the Clerk and a report showing the same shall be made to each Judge as and when each set of 100 cards has been depleted. Actions appealed or transferred to the Circuit Court shall be similarly assigned.

C. Either Judge may preside and hear and determine any case or question in the other Division when requested to do so by the Judge of that other Division. When either Judge is not available because they are absent from the county and for good cause it is deemed necessary that a motion or other pleading be heard and decided without delay, the other Judge may do so if they find that the circumstances justify and require it. In the event either Judge is disqualified for a good cause from trying any case, the case in which such Judge is so disqualified shall be by written order, reassigned to the other Division reciting therein the cause of such assignment. If both Judges believe themselves disqualified, the matter shall be certified to the Administrative Judge for this Region for the appointment of a special judge.

D. Where related actions are assigned to different Divisions, any party may move that the action be consolidated and/or transferred to that Division of the Court to which the first filed action was assigned.

5. MOTION DAYS AND MOTIONS

(The following applies to all motions in either civil or criminal matters, except those permitted by law to be heard ex parte.)

A. Motion days in Division I shall be held on the first and third Fridays of each month at 9:30 a.m. o'clock, local time.

B. Motion days in Division II shall be held on the second and fourth Fridays of each month at 9:30 a.m. o'clock, local time.

C. The Clerk shall keep a motion docket for each Division in which there shall be docketed, in order, all motions filed with the Clerk no later than 4:30 p.m. Friday, preceding the next motion day. Any motions filed thereafter shall be docketed on the following motion day. On the call of the motion docket, the Court shall either rule on a motion, set it for a day to be heard, or continue it until the following motion day.

D. There shall be filed with each motion a brief statement of the grounds therefor, with citations of authorities relied upon, which may be set forth in the body of the motion if the pleader so desires. If a party desires to respond or if the Court orders a response, the response to any motion shall be in similar form and shall be filed with the Clerk no later than five days prior to the date set for the hearing of the motion unless a different time is fixed by the Court.

E. Notwithstanding the foregoing, in case of urgency, a motion, upon proper notice, may be noticed for hearing at other times. In this event, the attorney for the moving party should consult with the Judge to whom the case is assigned for a suitable time for the matter to be noticed.

F. In the event that a party is properly noticed for a motion, and is absent at the hearing of the motion without making proper arrangements for such absence the Court may rule on such motion, even in the absence of such party, although the Court may consider in lieu of such party's presence, a properly filed memorandum.

G. Except for motions for summary judgment, no motion shall be filed without the tender of a proposed order in conformity therewith, excluding such orders that require findings of fact and conclusions of law. Such orders shall be by separate styled instruments and not on the same page as the motion in sufficient number for all parties.

6. ASSIGNMENT OF CIVIL ACTIONS FOR TRIAL

A. Any civil case in which the pleadings have been completed, or should have been completed, as to all parties who are not in default for failure to plead shall be eligible for assignment for trial on a day certain. Assignment of a case for trial shall be made by the Judge of the Division to which such case has been assigned, which assignment shall be made in accordance with CR 40, on motion of any of the parties, or on the Court's own motions.

B. Assignment of a case for trial at a pre-trial conference which has been convened in accordance with other provisions of these rules shall be deemed to have been made on the Court's own motion, and the parties shall be deemed to have been given proper notice thereof.

C. Motions to set cases for trial and notice of such motions will be governed by the provisions of these Rules pertaining in general to motions; however, if any attorney, who would oppose the motion does not appear after due notice, the case may be set for trial at that time for any date of earliest convenience to the Court under these Rules, with agreement of the parties or their counsel present on the noticed date. Failure of counsel (who may oppose such trial date) to appear will be considered a waiver of any objections to the date set.

E. The secretary of each Judge will keep available, for personal or telephonic inquiry, a calendar showing dates and times that such Judge has for the trial of jury and non-jury cases. Parties may, by agreed order, set cases for trial, in lieu of submitting a motion to set at motion day.

F. Once a trial date has been set, neither party shall be granted a continuance unless the Court is satisfied that the reasons were both unavoidable and unforeseeable on the setting date.

7. PROCEDURE IN CRIMINAL CASES

A. Grand Juries will be impaneled to serve until they complete their two (2) months, pursuant to KRS 29A.210(3). Upon completion of such service a new Grand Jury will be impaneled to commence serving the first court day of the following month.

B. Upon the third Friday of each month at 1:30 p.m., unless otherwise ordered, all defendants in criminal cases (except appeals) which have not been previously set for trial (or pre-trial) by order of Court, shall be required to appear for arraignment, if arraignment is required by law, and for the setting of such cases for trial on a day certain during the following available criminal term, or later under appropriate circumstances. In the even numbered months the Judge of Division I, and in the odd numbered months the Judge of Division II will be in charge of such arraignments and the assignment of trial dates for all cases that may properly be set for trial. Notwithstanding the provisions of this subsection, either Judge may hold arraignments and set cases at the request of the other Judge or in the absence or disability of the other Judge.

C. All proceedings after Final Judgment, which are conducted in the same cause, shall be heard before the Judge who presided at the trial of the case, or their successor in the same Division. Proceedings collaterally attacking a judgment of conviction shall be assigned by the Clerk to the Judge who presided when the judgment was rendered, or their successor in the same Division. Habeas corpus and other extraordinary proceedings which do not attack a judgment of conviction shall be assigned to a Division by the Clerk in the same manner as are civil cases.

D. Collateral and other proceedings instituted prior to trial will be brought before the Division in which the case is set for trial or if not yet set, then before the Division in charge of the jury for that term.

8. PRE-TRIAL CONFERENCES

Pre-Trial conferences shall be held in accordance with the provisions of CR 16, and shall be scheduled in all cases upon the motion of any party, or on the Court's own motion. Dates for pre-trial conferences shall be fixed by Court order, copies of which shall be mailed by the Clerk to all counsel of record, and to parties not represented by counsel, at least ten (10) days in advance of the date of the conference unless the parties agree otherwise.

9. JURY SELECTION

This Court hereby adopts the procedures set forth in the "Administrative Procedures of the Court of Justice: Part II, Jury Selection and Management, Section 5", to be implemented as follows:

A. The computer services of the Kentucky Board of Elections (Office of the Secretary of State) shall be used.

B. During or before August of each year, the Chief Judge or a designee, shall request the Board to furnish this court fourteen (14) separate lists, each bearing the names of prospective jurors (number to be determined by the Chief Circuit Judge), twelve (12) lists shall be designated as to month, and two (2) held in reserve for additional jurors as may be needed from time to time. At the Chief Judge's discretion the above lists may be used for both Circuit and District jury trials, or the Chief Judge may also request the Board to furnish fourteen (14) separate lists to be used by the District Judges, each bearing the names of prospective jurors (number to be determined by the Chief Circuit Judge), twelve (12) lists shall be designated as to month, and two (2) held in reserve for additional jurors as may be needed from time to time.

10. NON-AVAILABILITY OF JUDGE

A. In the event the Judge of a Division is, by reason of illness, necessary absence or other justifiable cause, unavailable to preside at any Civil or Criminal trial assigned to one Division or at any trial period or any portion thereof, Civil and Criminal, over which he/she is under these Rules scheduled to preside, the Judge available, consenting thereto, may preside over such trial, trial period or portion thereof.

B. When either Judge is not available because of disability by reason of sickness or other cause, or is unavailable because he/she is absent from the county, and for good cause it is deemed

necessary that a motion, pleading or other matter be heard and decided without delay in either a criminal or a civil case, the other Judge may do so if he/she finds the circumstances justify and require it.

C. Any order or judgment entered, in such event, shall recite such non-availability and consent.

11. ENTRY OF ORDERS AND JUDGMENT AND SERVICE

In all civil cases whenever any ruling is made, or Judgment rendered, a proper Order or Judgment in conformity therewith shall be prepared by the Court, or by counsel for any party to the proceeding, if so directed by the Court. The original of said Order or Judgment shall have thereon a prepared Certificate of Service for the Clerk's signature, and said Certificate shall state the names and addresses of all parties to the proceedings, who are not in default for failure to appear, or if the parties are represented by counsel, the name of their respective counsel and their addresses. The Order or Judgment, when signed by the Judge, shall be delivered to the Clerk for entry. Notice of entry of the Order or Judgment shall be made by the Clerk in accordance with CR 77.04. Any Order or Judgment prepared by counsel must be accompanied by sufficient copies for all parties entitled to notice, including the Special Commissioner and Friend of the Court, where appropriate. Failure to comply with the above shall be cause of the Court to refuse to sign such Order or Judgment, or the Clerk to withhold the entry thereof pending compliance.

12. DEFAULT JUDGMENTS

A party seeking a judgment by default where CR 55.01, 5.01, or 6.03 apply shall file a written motion for such a judgment, which must appear on the motion docket. Said motion shall be accompanied by the movant's certificate, as stated in CR 55.01. Any judgment by default entered by the Court shall, as a part thereof, state that the movant has furnished the certificate as required by CR 55.01. It shall also include by means of a certified complaint, affidavit or other such documentation, to sufficiently apprise the Court of the damages requested.

13. FAXES

No facsimile pleading or order shall be considered filed of record without an original being tendered within three days of the facsimile transmission.

14. ANSWERS TO INTERROGATORIES OR REQUESTS FOR ADMISSIONS

When answering interrogatories or requests for admissions, the replying party shall comply with CR 33.01.

15. **EFFECTIVE DATES**

The rules are adopted pursuant to the authority granted by CR 83 and SCR 1.040, and they shall apply with full force and effect to all actions pending after the date of their promulgation by order of the Chief Judge of McCracken Circuit Court and certification to the Chief Justice of the Supreme Court, but not prior to June 1, 2000.

All previous Rules of this Court are abolished.

Dated this the 28th day of April, 2000.

APPROVED:

R. JEFFREY HINES, JUDGE
McCRACKEN CIRCUIT COURT
DIVISION NO. I

CRAIG Z. CLYMER, JUDGE
McCRACKEN CIRCUIT COURT
DIVISION NO. II

APPROVED: This the 8 day of May, 2000.

JOSEPH LAMBERT
CHIEF JUSTICE
SUPREME COURT OF KENTUCKY